



**FILED**

Dec 15 2008, 8:48 am

*Beverly L. Smith*

**CLERK**

of the supreme court,  
court of appeals and  
tax court

ATTORNEYS FOR APPELLEE:

**STEVE CARTER**  
Attorney General of Indiana

**IN THE  
COURT OF APPEALS OF INDIANA**

APPEAL FROM THE TIPPECANOE SUPERIOR COURT  
The Honorable Thomas Busch, Judge  
Cause No. 79D02-0703-FA-20

**KIRSCH, Judge**

Kelly Saucedo pleaded guilty to dealing in a narcotic drug<sup>1</sup> as a Class A felony and neglect of a dependant<sup>2</sup> as a Class D felony. She was sentenced to a term of twenty years on the narcotics charge, with ten years suspended and ten years of probation, and a term of one and one-half years on the neglect charge, with the sentences to be served concurrently. She appeals, raising one issue, which we restate as whether her sentence was inappropriate.

We affirm.

### **FACTS AND PROCEDURAL HISTORY**

After a confidential informant advised police that Saucedo, a licensed practical nurse, was stealing prescription drugs from her place of employment and selling them from her residence, which was located within 1000 feet of an elementary school, an undercover officer accompanied the informant to Saucedo's home. *Appellant's App.* at 17. Saucedo's minor son answered the door and showed them in. *Id.* The officer asked Saucedo if she had any Ativan for sale, and when she replied in the affirmative, her son cleared off the top of a coffee table. *Id.* Saucedo then retrieved a large plastic bag filled with pills from under the table. *Id.* As she counted out the pills, she offered to sell them several morphine pills as well. *Id.* The officer agreed and paid Saucedo for the pills. *Id.*

Fifteen days later, the undercover officer returned, alone, to Saucedo's home and asked if she had any pills for sale. *Id.* Saucedo indicated that she had morphine and Lortab pills for sale and retrieved a bag from under the same coffee table. *Id.* The officer paid

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<sup>1</sup> See Ind. Code § 35-48-4-1.

<sup>2</sup> See Ind. Code § 35-46-1-4(a)(b).

Saucedo for the pills and left, after which the police obtained and executed a search warrant on Saucedo's residence. *Id.* Police found plastic bags of prescription pills in Saucedo's home, including Darvocet and morphine. *Id.* at 18. Based on the two undercover drug buys, for which Saucedo was paid \$40.00, and the drugs found by police during the subsequent search of her home, the State charged Saucedo with eleven counts: two counts of dealing in a narcotic drug<sup>3</sup> as a Class A felony, two counts of possession of a narcotic drug<sup>4</sup> as a Class B felony, dealing in a Schedule IV controlled substance<sup>5</sup> as a Class B felony, two counts of possession of a Schedule IV controlled substance<sup>6</sup> as a Class C felony, dealing in a narcotic drug<sup>7</sup> as a Class B felony, two counts of neglect of a dependant<sup>8</sup> as a Class C felony, and maintaining a common nuisance<sup>9</sup> as a Class D felony. *Id.* at 6-16.

Pursuant to a plea agreement that provided for an executed sentence not to exceed ten years, Saucedo pleaded guilty to one count of dealing in a narcotic drug as an A felony and one count of neglecting a dependent as a D felony and was sentenced as set forth above. She now appeals her sentence.

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<sup>3</sup> See Ind. Code § 35-48-4-1.

<sup>4</sup> See Ind. Code § 35-48-4-6.

<sup>5</sup> See Ind. Code § 35-48-4-3.

<sup>6</sup> See Ind. Code § 35-48-4-7.

<sup>7</sup> See Ind. Code § 35-48-4-1.

<sup>8</sup> See Ind. Code § 35-46-1-4(a)(b).

<sup>9</sup> See Ind. Code § 35-48-4-13.

## DISCUSSION AND DECISION

An appellate court may revise a sentence after careful review of the trial court's decision if it concludes that the sentence is inappropriate based on the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B). Even if the trial court followed the appropriate procedure in arriving at its sentence, the appellate court still maintains a constitutional power to revise a sentence it finds inappropriate. *Hope v. State*, 834 N.E.2d 713, 718 (Ind. Ct. App. 2005). Saucedo contends that her ten-year sentence is inappropriate because "the police instigated the transaction," and there was no "risk of harm to any alleged victim." *Appellant's Br.* at 13. She also argues that her lack of criminal history and her willingness to plead guilty and take responsibility for her crimes warrants a reduction in her sentence. *Id.* We disagree. Saucedo was a licensed practical nurse who stole drugs in significant quantities from her patients and sold them within 1,000 feet of a school in front of her minor child. Her sentence of ten years executed on a Class A felony which is significantly below the sentencing range is not inappropriate based on either the nature of her offense or her character.

Affirmed.

VAIDIK, J., and CRONE, J., concur.